

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

TIMOTHY RAY SADLER,

Petitioner,

vs.

STATE OF MONTANA,

Respondents.

Cause No. CV 20-08-H-BMM-JTJ

FINDINGS AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE

On December 15, 2019, Petitioner Timothy Ray Sadler filed this action under 28 U.S.C. § 2254.¹ Sadler is a state prisoner proceeding pro se. For the reasons set forth below, Sadler's petition should be dismissed.

I. 28 U.S.C. § 2254 Petition

The Court is required to screen all actions brought by prisoners who seek relief. 28 U.S.C. § 1915(a). The Court must dismiss a habeas petition or portion thereof if the prisoner raises claims that are legally frivolous or fails to state a basis upon which relief may be granted. 28 U.S.C. § 1915A(b)(1), (2). The Court must dismiss a habeas petition “[i]f it plainly appears from the petition and any attached

¹ See *Houston v. Lack*, 487 U.S. 266 (1988) (pro se prisoner's document deemed filed at the time prisoner delivers it to prison authorities).

exhibits that the petitioner is not entitled to relief.” Rule 4 Governing Section 2254 Cases. Because Mr. Sadler’s claims are unexhausted, his petition should be dismissed without prejudice.

I. Background/Sadler’s Claims

On May 4, 2017, following entry of a guilty plea, Sadler was convicted and sentenced for Threats/Improper Influence in Official Political Matters in Montana’s First Judicial District Court, Lewis and Clark County. (Doc. 1 at 1-2.) It appears that Mr. Sadler was originally given a probationary sentence, but that he was subsequently found to be in violation of the conditions of his sentence for cursing and “being a bad citizen.” See e.g., *Id.* at 5, ¶ 12(a). It appears that following the revocation of the suspended sentence, Mr. Sadler was placed in Montana State Prison (MSP) and ultimately transferred to Florida. *Id.* at 5, ¶ 12(b).

Sadler alleges he was unlawfully transferred to Florida for no reason, in violation of his right to Due Process and Equal Protection. *Id.* at 7. Sadler further explains that he was provided no notice of his transfer to Florida and did not commit any disciplinary violations in Montana which would warrant the transfer. *Id.* at 13-14. While Sadler acknowledges he has never presented his claims to the Montana state courts, he unsuccessfully attempted to file a prior action under 28 U.S.C. § 2254. *Id.* at 8.

Sadler asks this Court to place him back on probation or, alternatively, order his transfer back to MSP. *Id.* at 15.

II. Analysis

A state prisoner must exhaust his state court remedies before petitioning for a writ of habeas corpus in federal court. *Baldwin v. Reese*, 541 U.S. 27, 29 (2004). Federal courts may not grant a writ of habeas corpus brought by an individual in custody pursuant to a state court judgment unless “the applicant has exhausted the remedies available in the courts of the State.” 28 U.S.C. §2254(b)(1)(A). “The exhaustion-of-state-remedies doctrine, now codified at 28 U.S.C. §§ 2254(b) and (c), reflects a policy of federal-state comity, an accommodation of our federal system designed to give the State an initial opportunity to pass upon and correct alleged violations of its prisoners’ federal rights.” *Picard v. Connor*, 404 U.S. 270, 275 (1971) (internal quotation marks and citation omitted).

To meet the exhaustion requirement, a petitioner must (1) use the “remedies available,” § 2254(b)(1)(A), through the state’s established procedures for appellate review, *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); (2) describe “the federal legal theory on which his claim is based,” *Davis v. Silva*, 511 F.3d 1005, 1009 (9th Cir. 2008); and (3) describe “the operative facts . . . necessary to give application to the constitutional principle upon which the petitioner relies,” *id.* See also *Gray v. Netherland*, 518 U.S. 152, 162-63 (1996). A petitioner must meet

all three prongs of the test in one proceeding. “Mere ‘general appeals to broad constitutional principles, such as due process, equal protection, and the right to a fair trial,’ do not establish exhaustion.” *Castillo v. McFadden*, 399 F. 3d 993, 999, cert. denied, 546 U.S. 818 (2005).

In the present case, the Montana Supreme Court has never considered the claims Sadler attempts to advance. By Sadler’s own admission he has not presented his claims to the Montana Supreme Court. See e.g., (Doc. 1 at 2, ¶ 9(g); 3, ¶ 10; 5, ¶ 11(d)). Sadler explains he had difficulty pursuing relief because he was placed in maximum security and then transferred to Florida without access to the requisite forms. *Id.* at 7. Before Sadler can file a federal habeas petition, he must give the state courts one full opportunity to review his constitutional claims. *O’Sullivan*, 526 U.S. at 845. But because Sadler has not yet exhausted his available state court remedies, this Court cannot review the claim. See *Rose v. Lundy*, 455 U.S. 509 (1982). Dismissal should be **without prejudice**, allowing Sadler to return to this Court if and when he fully exhausts the claims relative to his current custody.

III. Certificate of Appealability

“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11(a), Rules governing § 2254 Proceedings. A COA should issue as to those claims on which a petitioner makes

a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The standard is satisfied if “jurists of reason could disagree with the district court’s resolution of [the] constitutional claims” or “conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Where a claim is dismissed on procedural grounds, the court must also decide whether “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Gonzalez v. Thaler*, 132 S. Ct. 641, 648 (2012) (quoting *Slack*, 529 U.S. at 484).

Sadler has not yet made a substantial showing that he was deprived of a constitutional right. Further, because his petition is unexhausted, reasonable jurists would find no basis to encourage further proceedings. There are no close questions and there is no reason to encourage further proceedings in this Court. A certificate of appealability should be denied.

Based on the foregoing, the Court enters the following:

RECOMMENDATION

1. Sadler’s Petition (Doc. 1) should be DISMISSED without prejudice as unexhausted.
2. The Clerk of Court should be directed to enter judgment of dismissal.
3. A certificate of appealability should be DENIED.

**NOTICE OF RIGHT TO OBJECT
TO FINDINGS & RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Sadler may object to this Findings and Recommendation within 14 days.
28 U.S.C. § 636(b)(1).² Failure to timely file written objections may bar a de novo
determination by the district judge and/or waive the right to appeal.

Mr. Sadler must immediately notify the Court of any change in his mailing
address. Failure to do so may result in dismissal of his case without notice to him.

DATED this 11th day of February, 2020.

/s/ John Johnston

John Johnston

United States Magistrate Judge

² Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Sadler is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.